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Richard Fordyce, Administrator
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Washington, DC 20250



**Comments of the Izaak Walton League of America on the U.S. Department of Agriculture
Farm Service Agency Conservation Reserve Program Interim Final Rule**

RIN 0560-AI41, Docket ID: CCC-2019-0006

Submitted via Regulations.gov

Administrator Fordyce,

We appreciate the opportunity to provide comments on the USDA Farm Service Agency's Interim Rule for the Conservation Reserve Program. The USDA has important decisions to make concerning implementation of the extensive changes made by Congress to the Conservation Reserve Program in the 2018 Farm Bill, and has already been making important decisions about how to implement the program that are not reflected in the Interim Rule.

The Izaak Walton League of America was chartered in 1922 by 54 anglers to protect America's rivers, wetlands, and other natural resources for future generations. Today the League has 40,000 members in more than 220 chapters across America. Our members hunt, fish, hike, bike, canoe, kayak, camp, and enjoy the great outdoors. Our involvement in agricultural policy dates back nearly a century, when the League was assessing water pollution in America's rivers. The League supported efforts to improve soil conservation as early as the first Farm Bill, signed by President Franklin Roosevelt in 1933 to help farmers and rural communities devastated by the Dust Bowl. The League's "Walton Soil Plan" of 1954 presaged the 1956 Soil Bank Act, which was the precursor of the Conservation Reserve Program enacted in the 1985 Farm Bill. Throughout that time the League has consistently supported common sense conservation on America's farms and ranches, and good stewardship of our tax dollars.

The benefits of the Conservation Reserve Program are well documented. The Conservation Reserve Program (CRP) has reduced soil erosion on millions of acres of highly erodible cropland. It has provided wildlife habitat for both common and rare wildlife. It has improved water quality and restored fish habitat by helping landowners plant buffer strips that protect wetlands and streams. It has helped farmers and rural communities persevere during the ups and downs of the farm economy, and helped transition land to a new generation of farmers.

The U.S. Department of Agriculture (USDA) can and should maximize the environmental and economic impacts of the Conservation Reserve Program. It can do that by reaching and

maintaining full enrollment of the acres allocated by Congress in the 2018 Farm Bill, by targeting CRP contracts in watersheds and areas where they will do the most good, and by employing CRP practices that best address the natural resource problems in those targeted areas.

We believe, however, that the way USDA is currently administering and delivering the program, and some of the changes proposed in the Interim Rule, are reducing the benefits to taxpayers, farmers and other landowners, and our environment. We strongly urge USDA to fix the problems we identify in the Interim Rule, and we urge it to generate the maximum benefits from the program by fixing the problems we identify below in how USDA is implementing the program.

In our view, three of the most important issues with respect to administration of the Conservation Reserve Program involve the threat to future funding levels for the CRP, the level of rental and incentive payments for CRP contracts, and USDA's failure to promote and prioritize Conservation Reserve Enhancement Program opportunities that leverage state and local dollars to accomplish conservation objectives. Thank you for considering the following comments and recommendations.

Funding for the Conservation Reserve Program

USDA has made or announced discretionary decisions regarding the Conservation Reserve Program (CRP) that have important implications for the future of the CRP and for other USDA conservation programs. Its discretionary decisions to reduce Practice Incentive Payments, to eliminate rental rate incentive payments in Continuous CRP, to reduce the number of practices covered by Continuous CRP by removing State Acres For Wildlife Enhancement, and by discouraging Conservation Reserve Enhancement Program partnerships are already reducing the dollars being committed to the program, and will reduce them even more in the future.

If our estimates are correct, USDA is reducing its commitment to the CRP and to conservation in general by hundreds of millions of dollars over the next few years. We see no effort by USDA to invest those savings back in the CRP or in other conservation programs. In addition to discouraging potential participants and likely reducing the quality of CRP enrollments, USDA is foregoing substantial conservation benefits. It could also be putting the future level of the CRP at risk, should the Congressional budget baseline for the program be reduced to reflect these recent actions. As we note below we believe many of these discretionary decisions are bad policy and will result in fewer CRP enrollments and/or lower quality CRP contracts, but we also urge USDA to recognize the budget implications of its decisions on the future capacity of the agency to help farmers and ranchers put in place conservation practices.

As we note in comments to follow, we encourage USDA to restore payment and rental rate incentive payments, restore SAFE to Continuous CRP, encourage CREP partnerships, and achieve and maintain enrollment in CRP at the statutory cap, which should eliminate the potential for a loss of budget baseline.

We also urge USDA to ensure that any savings resulting from discretionary changes in the Conservation Reserve Program are invested back into the CRP.

Rental Payments and Incentive Payments (§1410.41 et seq.)

The Conservation Reserve Program was designed to give farmers and landowners a fair rental payment for land they agree to take out of production.

We ask USDA to understand that, setting aside CRP Grassland acres, there are at least two distinct markets with respect to CRP enrollment. Farmers/landowners interested in the CRP Continuous Signup practices are almost always setting aside land that they would otherwise farm to be buffer strips, filter strips, shelter belts, or other partial-field treatments. They almost always continue to farm the adjacent land. The CRP offer is not land they would otherwise rent out to another farmer, it is almost always land they would otherwise produce crops on. USDA is not competing with other farmers for this land, they are competing for the landowner's attention and with his or her options to farm the land. Continuous CRP contracts tend to be small in acreage, with the non-CREP Continuous CRP contracts averaging less than 20 acres per farm, and about \$2,650 in annual rental. CREP Continuous CRP contracts average less than 25 acres per farm, and about \$4,130 in annual rental¹. These are significant but a tiny part of the income of most farms, and the 'hassle factor' of obtaining a contract, farming around the acres in CRP, and mid-contract management is an important consideration.

In contrast, the General CRP is used by some farmers as an income diversification tool, to set aside land with low productivity, or as part of a transition to retirement. Some non-operating landowners use the CRP to provide hunting opportunities, to heal damaged land, or as an alternative to renting the land to an individual. In some but not all cases, USDA is competing with other farmers for the land.

To continue to convince farmers to enroll in any of the CRP options, USDA must provide contracts that fairly compensate farmers for the loss of production on their land, or that are an attractive alternative to cash rental they could otherwise obtain. With the change in how USDA calculates rental, the Congressional action to cap base rental rates at 85% of 90% of fair rental value, and USDA's decision to reduce or eliminate incentive payments for CRP contracts, we fear USDA is undercutting the demand for CRP contracts. In discussions with farm groups and news reports we have heard of situations where the package of CRP payments a landowner is offered have been cut by half or more. We think the very low farmer demand for Continuous CRP contracts in 2018 and 2019 – at a time when crop prices and farm income were, like today, very low -- reflects the very low payments USDA is now offering.

¹ USDA Farm Service Agency, *CRP Contract Summary and Statistics*, December, 2019.

In 2018 (Notice CRP-852) USDA changed the way it calculates soil rental rates, eliminating the soil productivity factor it had used in the past to adjust upwards the average county rental rate to better match the fair market rental value of the land with highly productive soils, but maintaining the soil productivity factor it uses to reduce downward the average county rental rate for farms with less productive soils. The change can especially impact farmers with productive bottomland soils considering whether to enroll in Continuous CRP buffer strips, who are now offered much less than fair market rental. In the 2018 Farm Bill (Sec. 2207(c)) Congress capped regular rental payments at 90% (for Continuous CRP) and 85% (for General CRP) of county average rental rates, but clearly anticipated that USDA would continue to adjust those calculated soil rental rates for productivity:

“Notwithstanding forest management incentive payments described in subsection (c), the county average soil rental rate (before any adjustments relating to specific practices, wellhead protection, or soil productivity) shall not exceed –

(i) 85 percent of the estimated rental rate determined under this paragraph for general enrollment; or

(ii) 90 percent of the estimated rental rate determined under this paragraph for continuous enrollment.”

We urge USDA to return to its past practice of providing an upward soil productivity adjustment to National Agricultural Statistics Service county average rental rates, which would be made after the county average rental rate is calculated and the 85% or 90% limit applied.

We support the language in §1410.41(e) providing for Practice Incentive Payments (PIPs) of up to 50 percent of the actual cost of installing an eligible practice. We support the language in the Interim Rule §1410.42(b) allowing for an incentive payment as a portion of the annual payment for specified practices, and the language allowing for USDA to set a maximum cap on per-acre rental payments. We support the language in §1410.45(e) providing for additional financial incentive payments for contracts expected to provide especially high environmental benefits.

However, we note that in implementing the CRP and its enrollment offers, USDA has announced it will pay not more than 5% for PIPs, and will not pay additional rental rate incentives that it has provided in the past for many Continuous CRP practices (beyond the 32.5% Signup Incentive Payments required by the 2018 Farm Bill). It proposes in this Rule to pay no cost-share for non-grazing mid-contract management activities like controlled burning and tree/shrub management.

We urge USDA to increase its payment rate for Practice Incentive Payments to 40% or 50% for practices eligible for PIPs. We urge USDA to restore the rental rate incentives of at least 20% for high value Continuous CRP practices, including those related to water quality under the CLEAR provision. As we note elsewhere

in these comments, we urge USDA to restore cost-share for non-grazing mid-contract management activities like controlled burning.

Conservation Reserve Enhancement Program (\$1410.90)

In writing the 2019 Farm Bill, Congress placed extensive provisions related to the Conservation Reserve Enhancement Program (CREP) in statute. Prior to that, CREP was largely a construct of USDA administrative actions dating back to 1997. Unfortunately, in some cases the Interim Final Rule would discourage the use of CREP agreements by putting in place provisions that appear to go beyond what is in the legislation. In others, USDA fails to address important statutory provisions.

The Conservation Reserve Enhancement Program (CREP) provides many examples of how federal CRP payments are leveraged by state and other funds to deliver effective conservation in targeted areas. CREP projects have helped restore trout streams, restore and protect wetlands that benefit migrating ducks and geese in Iowa, reduced polluted runoff into the Chesapeake Bay, restored habitat for rare lesser prairie chickens in Kansas, and helped protect salmon streams in the Pacific Northwest.

The 2018 Farm Bill places new language in statute (Sec. 2202, which creates a new section 16 USC 1231A) governing the Conservation Reserve Enhancement Program. The new statute provides that “Subject to subparagraph (B), an agreement under this subsection shall not affect, modify, or interfere with existing agreements under this subchapter.” The new rule includes similar language, and adds: “In order to implement other provisions of this section, the signatories to a Conservation Reserve Enhancement Program agreement in effect on or before December 20, 2018, may mutually agree in writing to modify such agreement in such a manner.”

We have been very concerned about USDA’s unwillingness to renew, extend, revise, and restore CREP agreements over the past several years. Using as an excuse first that Congress was writing a new Farm Bill, and then that USDA needed to write rules to implement the new Farm Bill provisions, USDA has, in our view, been unwilling to even discuss renewing, extending, revising, or restoring some CREP agreements. A couple examples:

In 2017, the Farm Service Agency (FSA) ignored a request from the State of Kentucky to extend its CREP agreement, and FSA then announced to landowners there would be no further enrollments or reenrollments under the program. Well before the new Farm Bill was passed, FSA reportedly demanded that Kentucky fund a higher share of the program’s payments to farmers and administrative costs of the program².

² Burton, Sharon, *Green River CREP Contracts Won’t be Renewed*, The Farmer’s Pride, Aug. 17, 2017, <https://thefarmerspride.com/2017/08/17/green-river-crep-contracts-wont-be-renewed/>

Enrollment under the Illinois CREP was temporarily suspended in July, 2015 because a state budget impasse disrupted the availability of state funds for the state's share of the program. That issue was resolved in 2018 with approval of \$20 million from the state legislature, but USDA failed to re-institute enrollment, citing the negotiations over the next Farm Bill. After the bill was passed, USDA cited the absence of new CRP program rules in delaying further, even though the statute clearly gave USDA authority to continue to operate under the old rules until September 30, 2019. To date, we understand FSA has not yet reopened enrollment under the Illinois CREP.

USDA's web site shows approved CREP agreements in 33 states, and some of those states have multiple CREP agreements in place³. What is not clear from the USDA web site, or from the Interim Final Rule, is which of those CREP agreements USDA considers "in effect on or before December 20, 2018" and thus covered by the provision, although we would note that both the Kentucky and Illinois CREP agreements noted above are listed on the USDA web site as approved CREP agreements.

We urge USDA to use the broadest interpretation possible in assessing which CREP agreements fall under the "grandfather clause" of agreements in place included in the 2018 Farm Bill, including agreements where USDA was unwilling to extend existing CREP agreements (as in Kentucky), or where USDA failed to restore enrollment under a CREP agreement after a state had restored funding for its share of CREP costs (as in Illinois). States with CREP agreements should not be penalized for USDA's inaction.

We also urge USDA to recognize the value of CREP agreements, which bring state, Tribal, and non-governmental organization expertise, staff, and funds to this important conservation work, and leverage those non-federal funds to focus CREP practices in targeted areas where they will do the most good. USDA should be actively encouraging, not discouraging, the use of CREP agreements.

The 2018 Farm Bill requires USDA to provide continuous enrollment for Conservation Reserve Program contracts enrolled through Conservation Reserve Enhancement Program (CREP) agreements (Sec. 2201(c)(6)(A)(ii)), and requires continuous signup for certain marginal pasture land, water quality practices, and other designated practices. Continuous enrollment was a long-time method for CREP and other high-value soil erosion, water quality, and wildlife practices, but in 2017 USDA abandoned the continuous signup method in favor of short-term signup windows for a limited number of those practices. In some cases, USDA continued to use continuous signup to enroll contracts through CREP agreements.

³ U.S. Department of Agriculture, *CREP State Updates*, https://www.fsa.usda.gov/programs-and-services/conservation-programs/crep-state-updates/index#Kentucky_CREP

We are pleased that USDA has returned enrollment under at least some CREP agreements and for some other high priority practices to a continuous rolling signup. We support the language in the rule indicating that, “generally, enrollment under a Conservation Reserve Enhancement Program will be held on a continuous signup basis” (§1410.90(h)), and we strongly encourage USDA to continue to make these contracts available whenever farmers and other landowners are ready to enroll.

As we note elsewhere in these comments, we believe USDA should also restore critical high-value wildlife practices (State Acres For Wildlife Enhancement) to a continuous signup basis.

One justification for this continuous signup method, that the contracts have high environmental value and would most likely be selected for a General CRP contract if offered, holds as true today as when continuous signup began.

The Interim Rule includes language with respect to the required state match under CREP agreements. Under this language (§1410.90(c)(1)), the amount of matching funds must be “30 percent of the total cost of the project, unless a different amount is determined by negotiation between CCC and the eligible partner with whom CCC is entering into the Conservation Reserve Enhancement Program agreement, if the majority of the matching funds to carry out the agreement are provided by one or more eligible partners that are not nongovernmental organizations.”

The new statute (new Sec. 1231A(b)(2)(B)) makes no mention of this presumption of a 30% state match. The impacts of this discretionary decision are not considered in the Programmatic Environmental Assessment, and according to the Programmatic Environmental Assessment the impacts of this provision were not the subject of consultation between USDA and the states which would be impacted. We believe the provision as written could set a de facto or at least assumed 30% minimum state match, which could discourage potential state partners from investing time and money in developing new CREP partnerships. It could also deter states with existing CREP agreements from seeking needed changes to their CREP agreements for fear this 30% minimum match would be applied to the revised agreement.

We urge USDA to strike the language: “30 percent of the total cost of the project, unless a different amount is” from the rule, providing that the match will be “Determined by negotiation between CCC and the eligible partner...” under §1410.90(c)(1).

The Interim Rule includes a 30% minimum match for projects where a majority of the matching funds are provided by nongovernmental organizations (§1410.90(c)(2)), but we believe in that case the rule appropriately tracks the statutory language.

The Interim Rule also includes a provision (§1410.90(c)) that “at least one-half of the matching funds must be provided as a direct payment to eligible participants.” Here again, there is no basis in statute for this provision, nor was it part of the environmental assessment nor any consultation with states on the impact of this provision. We do not know whether the consultation with Indian Tribes referenced in the rule covered this provision or not, but we would think it could be at least as much of a challenge for Tribal governments as for non-governmental organizations or states. The statute itself (new Sec. 1231A(c)(1)) simply says “Funds provided by an eligible partner may be in cash, in-kind contributions, or technical assistance, as determined by the Secretary.” Every potential CREP partner will bring its own unique blend of resources including expertise, technical assistance, outreach, cash for payments, and other kinds of incentives. By requiring a large part of the match to be in the form of direct payments to eligible participants, the rule will preclude and discourage some potential partners from developing valuable CREP partnerships.

We urge USDA to remove this provision from the rule, and simply require, as the statute does, that “Funds provided by an eligible partner may be in cash, in-kind contributions, or technical assistance, as determined by the Secretary.”

The statute provides important information about the contents of the CREP agreement which are not reflected in the rules. That includes new Sec. 1231A(b)(A) covering conservation concerns, goals, geographic location, payments, and practices, (B) covering the matching funds, and (C) covering procedures to allow for a temporary waiver of matching funds where justified.

For clarity and to make it easier for potential CREP partners to understand basic requirements of the program, we urge USDA to include in the CREP portion of the rule language that duplicates the statutory language in new Sec. 1231(b)(A), (B), and (C).

Sections 1231A(a)(4) and (c)(4) of the 2018 Farm Bill require the Secretary to make “cost-share payments to encourage the regular management of the riparian buffer” (activities to enhance or maintain the vegetative cover) post-establishment, throughout the life of the CRP contract and consistent with the conservation plan. Section 1231(c)(4) further specifies that these cost share payments are up to “100 percent of the normal and customary projected management cost, as determined by the Secretary in consultation with the applicable State technical committee.” Congress included the provision to ensure “regular management of the riparian buffer” to maximize environmental benefits. §1410.90(e) of the CRP Rule implements this provision consistent with the Farm Bill. However, it is not clear how this language will be incorporated into existing CREP agreements.

We urge USDA to provide states with standardized CREP agreement amendment language and a streamlined amendment process to incorporate this provision into existing CREP agreements. Updating a CREP agreement to include new 2018

Farm Bill provisions should not be considered a major change and, therefore, should not trigger the need to renegotiate other terms of the CREP Agreement.

Access to USDA Rulemaking

We note that USDA has provided only one pathway in the Interim Rule to provide comments, which is through the Regulations.gov online portal. Many farmers, and many rural areas, have no easy access to the internet or have poor internet service which might preclude them from providing comments through Regulations.gov. We urge USDA in the Final Rule and in future rulemaking proceedings to also provide a physical address where all Americans can participate by mailing or delivering comments, not just those with computers and good internet access.

Definitions (§1410.2)

The definition of “field border” is unnecessarily limited to a permanent vegetation strip “the purpose of which is to provide food and cover for quail and upland birds in cropland areas.” A field border can serve other conservation purposes, including serving as a buffer between an organic crop field and a neighbor who uses non-organic chemicals. The Natural Resources Conservation Service Field Border practice standard (CP 386) notes a number of other conservation purposes, including reducing wind and water erosion, assisting in the management of harmful insects, and protecting soil and water quality. The rule should allow for the use of field borders for these other conservation purposes where they are appropriate.

We urge USDA to amend the definition of “field border” to read: “Field border means a strip of permanent vegetation established at the edge or around the perimeter of a field that is planted for the purpose of providing food and cover for wildlife, reducing erosion, protecting water quality, serving as a buffer for organic fields, providing habitat for beneficial insects, increasing carbon storage in soils, or other conservation purposes as determined by the Secretary.”

In the definition of “Socially disadvantaged farmer or rancher,” the term “Hispanic” refers to people who speak Spanish and/or are descended from Spanish-speaking populations, which would include people from Spain and much of Latin America but not from Brazil (where Portuguese is the primary language), whereas “Latino or Latina” refers to people who are from or descended from people from Latin America (which would include Brazil but not Spain). We believe the intent was to include people from Latin America in the definition.

We urge USDA to replace “Hispanics” with “Latinos or Latinas” or “Latinxs” in the definition of Socially disadvantaged farmer or rancher.

Conservation Priority Areas (§1410.8)

Soil erosion, water quality, and wildlife are co-equal purposes of the Conservation Reserve Program. In establishing Conservation Priority Areas under §1410.8, USDA leaves out significant soil erosion as a justification for the designation of a Conservation Priority Area.

We urge USDA to include “soil erosion” in subsection (b) and (d) alongside water quality and wildlife with respect to the designation of a Conservation Priority Area and the cropland considered eligible as a result of the designation.

CRP Grasslands (§1410.13 and §1410.31)

Native prairie is one of America’s most beleaguered, and fastest disappearing, ecosystems. The statute makes marginal pasture adjacent to a stream, lake or wetland that can serve as a buffer for the water body eligible for enrollment in CRP Grasslands, and the 2018 Farm Bill provides priority criteria for enrollment (Sec. 2201(c)(2)) that includes land with an expiring CRP contract, at risk of conversion or development, or of ecological significance. The 2018 Farm Bill will also increase the portion of CRP acres set aside for CRP Grasslands to 2 million acres by 2021.

§1410.13 of the Interim Rule describes the land that can be enrolled in the Grassland CRP and the approved activities, and §1410.31(e) and (f) describe some of the factors USDA will use to evaluate offers for Grassland CRP contracts. We believe the term “ecological significance” should include the concept of unbroken native prairie, especially with respect to the remnant tallgrass prairie that have been so devastated over the last two centuries.

We urge USDA to amend the language in §1410.31(f)(3) (describing Land of ecological significance) to include: “(iv) Native prairie remnants”.

CRP Conservation Plan and Payments for Management Activities (§1410.22)

Congress wisely included language in the 2018 Farm Bill to allow grazing as a mid-contract management activity without a reduction in the rental rate. We support this approach because of the benefits it provides for the grassland and the landowner, and urge USDA to encourage the use of this grazing practice where appropriate, including through the new authority to provide cost-share on water and fencing. Because the landowner would no longer be subject to a rental rate reduction, Congress also included language to prohibit cost-share for grazing when used as a mid-contract management activity. Sec. 2207(a)(2)(B), which limits cost-share for this practice, refers specifically to “Mid-contract management *grazing*” in the title, but there are other kinds of mid-contract management. Controlled burns, for example, are an important management tool for grasslands that can help release nutrients, rejuvenate the grassland, and control invasive species like eastern red cedar.

However, unlike grazing which provides an economic return to the landowner, controlled burning provides no economic benefit and is only a cost. Controlled burns, in particular, involve some risk to neighboring landowners if not done with adequate safeguards, so scrimping on the cost of a controlled burn is not something USDA should encourage. By providing a cost-share for controlled burns as a mid-contract management option, USDA could help landowners ensure a successful and safe mid-contract management activity. Other non-grazing mid-contract management activities like cutting eastern red cedars also represents a cost without an economic return for the landowner, and also justify cost-share assistance from USDA. Without cost-share for these activities, we fear fewer landowners would conduct adequate management, resulting in a decrease in habitat and grassland quality.

However, §1410.22(e) of the Rule includes discussion of management activities required under a conservation plan, saying “CCC will not provide any cost-share payment for any management activities.” We believe FSA may have interpreted the statutory language cited above to prohibit cost-share for *every kind* of mid-contract management, but we believe this interpretation runs counter to Congressional intent. This is clearly evident from the reference to “Mid-contract management grazing” in the statute under Sec. 1234(b)(2)(B) and the fact that throughout the years-long process of negotiating and writing the conservation title of the 2018 Farm Bill, removal of all authority to provide cost-share for mid-contract management was not put on the table as a proposed cost-savings – the discussion was focused on removal of cost-share for grazing as a mid-contract management activity to offset the economic benefits of grazing.

We urge USDA to interpret the statute as allowing cost-share for non-grazing mid-contract management, and urge USDA to provide cost-share for non-grazing mid-management activities including controlled burns.

Should USA choose to continue to prohibit USDA cost-share for all mid-contract management activities, we urge USDA to ensure that it will allow third parties like state agencies or non-governmental organizations to provide support for those activities, including as part of the match provided by states or other partners for Conservation Reserve Enhancement Program agreements.

We also note that the loss of mid-contract management payments is yet another loss of income to a prospective CRP participant, combined with reduced rental rates and reduced incentive payments. It is yet another reason for USDA to restore practice incentive payments and other incentive payments to help close the gap for landowners.

Pollinator-Friendly Seed Mixes (§1410.22)

With the increase in authorized CRP acres under the new Farm Bill and millions of acres of CRP contracts expiring in the next few years, USDA has a tremendous opportunity to provide benefits for the many species of pollinators that are in jeopardy or in decline. We also recognize that USDA has come under some criticism in some locations for offering CRP whole-field contracts for pollinator habitat at above-market rental rates to attract participants. Unfortunately USDA's response, to largely eliminate incentives for whole-field SAFE practices and move SAFE out of Continuous CRP, could preclude the use of Continuous CRP to continue to address other species of great conservation concern like the lesser prairie chicken and sage grouse that require a whole-field approach to habitat.

We believe USDA can better meet the needs of pollinators by ensuring that every CRP contract provide some benefits for pollinators. USDA can do this by requiring that CRP seed mixes include at least one forb that provides benefits for pollinators (such as the genus *asclepias* which benefit monarch and other butterflies as well as bees). By ensuring pollinator-friendly plants in every CRP planting, USDA could provide widespread benefits for pollinators on millions of acres of CRP, rather than on just a few hundred thousand acres of pollinator habitat clustered in a handful of states. Where appropriate, high-diversity pollinator seed mixes are still a good choice and should be encouraged, but USDA should also ensure that every CRP acre provide some benefits for pollinators.

We urge USDA to require that CRP seed mixes include at least one forb that provides benefits for pollinators in the CRP Conservation Plan. At a minimum, USDA should better prioritize the inclusion of pollinator-friendly seeds and plantings through the Environmental Benefits Index.

Native Vegetation (§1410.23)

In §1410.23(a)(1), the Rule includes as eligible practices those that “Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, trees, permanent wildlife habitat, and grassland improvements.” We are concerned about the specific inclusion of introduced species in this list. Native plants provide equal or better benefits for soil conservation, water quality, carbon sequestration, ecosystem function, and livestock forage, while also providing excellent habitat for wildlife and pollinators. Native plants are well adapted to the local climate and often easier to establish. Congressional agriculture committee leaders recognized the importance of native plants while writing the 2018 Farm Bill, and included strong language in the 2018 Farm Bill Conference Report directing USDA to encourage the adoption of native vegetation seed blends:

“The Managers recognize the benefits of native vegetation to improve water and air quality and enhance soil health. By encouraging the adoption of native vegetation seed blends, USDA

programs are supporting habitat restoration for the northern bobwhite, lesser prairie-chicken, greater sage-grouse, other upland game birds, songbirds, monarch butterflies and pollinators. The Managers encourage the use of native vegetation where practicable.”

We urge USDA to prioritize the use of native vegetation whenever ecologically appropriate for all new contracts, making native seeds, trees, and shrubs the default choice except in cases where NRCS determines that non-native species provide habitat or other ecological advantages. We recommend changing this language in the final rule to read “Establish permanent vegetative or water cover, including native species of grasses and legumes, trees, permanent wildlife habitat, and grassland improvements.” At a minimum, USDA should better prioritize the use of native vegetation through the Environmental Benefits Index.

Signup Opportunities and State Acres For Wildlife Enhancement (§1410.30)

The Interim Rule (§1410.30(a)) requires a CRP enrollment period at least once each year, and we strongly urge USDA to stick to this requirement. The lack of signup opportunities for the past several years, USDA’s failure to use the transition authority provided by Congress to hold a General CRP signup during fiscal year 2019, and USDA’s reducing rental rates and incentives during very abbreviated Continuous CRP signups have left the program’s enrollment well below its statutory cap. It has also had other impacts. USDA’s refusal to hold a general signup, and the large drop-off in Continuous CRP signup since 2017 has done substantial harm to the farmers who produce grassland seed used in CRP plantings, as a substantial part of their market has disappeared. Many have gone out of the seed producing business as a result, which will make it difficult for landowners enrolling in CRP contracts to find quality native seeds at affordable prices in the next several years.

USDA can reduce landowner and taxpayer costs, and provide farmers who produce seed with a more consistent market, by providing for more consistent year-to-year enrollment in the program as it evaluates current CRP contract offers and plans for future signups.

The CRP State Acres For Wildlife Enhancement (SAFE) is a popular and highly effective program that has focused CRP contracts in areas where they can address critically important fish and wildlife challenges, often leveraging state and other resources in the process. SAFE has helped keep important species like the sage grouse and sharp-tailed grouse off of the endangered species list, aided the lesser prairie chicken, northern bobwhite quail, gopher tortoise, and many pollinator species. With 2 million acres of CRP SAFE contracts in place, the program is proving a great success. We were very disappointed when USDA removed SAFE and other important wildlife and pollinator practices from eligibility for Continuous CRP enrollment in recent signups.

We strongly disagree with USDA's decision to move most SAFE practices from Continuous CRP to the General CRP signup. The change will eliminate Signup Incentive Payments (SIPs) and Practice Incentive Payments (PIPs), which help offset the cost of creating high quality habitat for targeted wildlife species otherwise paid by participants. Without the incentive payments to offset the cost of creating and maintaining high quality habitat, landowners will be much less likely to choose SAFE over lower-cost, but less effective practices, and they could forego enrollment altogether. The Interim Rule (§1410.30(b)) provides a list of practices eligible for continuous signup which includes a number of water quality practices. Although the rule includes the phrase "including, but not limited to" (which we support), we think the rule would be strengthened by including mention of the high priority wildlife practices offered through SAFE initiatives.

We urge USDA to return to the practice of offering SAFE practices as an option during Continuous CRP enrollment. We urge USDA to include critical wildlife practices, along with practices designated through SAFE initiatives, to the list of practices eligible for Continuous CRP under §1410.30(b).

USDA's decision to remove SAFE from Continuous CRP to General CRP presents additional problems of fairness in evaluating General CRP offers using the Environmental Benefits Index since not every state has a SAFE initiative. As announced, the General CRP enrollment offer does not adequately provide incentives for enrollment in SAFE practices under the Environmental Benefits Index.

If USDA refuses to offer SAFE practices under Continuous CRP, we urge USDA to modify the Environmental Benefits Index to better encourage SAFE contracts in the General CRP, but to do so in a way that does not penalize non-SAFE wildlife practices in states without SAFE initiatives.

State Allocations (§1410.31)

The 2018 Farm Bill (Sec. 2201(c)(4)) requires the Secretary to allocate, to the maximum extent practicable, 60% of the non-Grassland CRP acres each year according to historical state enrollment rates. The Interim rule does not include any details on how this requirement will be implemented. This is an important issue with environmental implications that should have been analyzed in the Environmental Assessment and should be covered in the Rule. In our view, USDA should make every effort to implement the provision in a way that does not reduce the overall environmental benefits of the program. USDA can ensure that outcome in several ways.

USDA should include Continuous CRP (including CREP acres) and General CRP, but not Grassland CRP, in the calculating the acres of enrollment (while the statutory language is a little vague, we believe this was the intent of Congress).

Continuous CRP should remain available continuously, so USDA can use estimates of Continuous CRP signup to inform decisions made in General CRP signups.

In offering General CRP contracts, USDA should set a minimum score on the non-economic portion of the Environmental Benefits Index that all contracts must meet. If offers in a state that has not yet met its projected enrollment target fail to meet that minimum, they should nonetheless not be offered a CRP contract and those offers should go elsewhere.

In states where enrollment falls short of achieving the enrollment targets, USDA should actively seek out and encourage Conservation Reserve Enhancement Program and State Acres For Wildlife Enhancement proposals, and should actively promote Continuous CRP options to landowners in the state in an effort to achieve the state enrollment target.

Opportunity to Propose Alternative Soil Rental Rates (§1410.42)

Section 1234(d)(4)(D)(i) of the 2018 Farm Bill requires the Secretary to “provide an opportunity” for State FSA Committees and CREP partners “to propose an alternative soil rental rate prior to finalizing new rates.” However, the new CRP rule is silent on these provisions. In fact, USDA’s Notice CRP-852 from June, 2018, with respect to soil rental rates (SRR’s) says “updated 2018 SRR’s are not appealable and, therefore, alternative rate submissions will not be considered.” This is a particularly important issue in many parts of the Chesapeake Bay watershed and the Northeast where there are not robust rental markets for cropland, and thus, it is particularly important for USDA to provide ample opportunity and careful consideration of input from States and CREP partners to establish fair and adequate soil rental rates.

We urge USDA to provide clear policy spelling out the time frame and procedure allowing States and other CREP partners to propose, and USDA to adopt, alternative soil rental rates.

Wind Turbines (§1410.63)

The Izaak Walton League supports renewable energy including wind energy, but we believe that wind turbine siting should consider the impacts on wildlife. The Interim Rule says that FSA will consider “the extent to which the land contains threatened or endangered wildlife and wildlife habitat.” Wind turbines, if improperly sited, can have impacts on other birds of conservation concern that may not be threatened or endangered. Since wildlife is a co-equal purpose of the CRP, we think USDA approval of a wind turbine on CRP contract acres should be subject to a site-specific assessment of the impacts on wildlife and consistent with the conservation plan. Studies show that installing wind turbines within the key habitat of important species like lesser

prairie chickens, sage grouse and sharp tailed grouse can be detrimental to their use of that habitat.

We urge USDA to revise §1410.63(d) to read “...considering....the extent to which the land contains threatened or endangered wildlife and wildlife habitat, and the purposes of CRP including benefits provided to other wildlife species, and subject to restrictions to protect wildlife benefits developed in consultation with the State technical committee, but only in exchange...”

We also urge USDA to ensure that each proposal for wind turbine installation is evaluated in consultation with the U.S. Fish & Wildlife Service and state fish and wildlife agencies to ensure that it doesn't undermine taxpayer investments in wildlife benefits on CRP acres.

Soil Health and Income Protection Pilot Program (§1410.70)

Section 2204 of the 2018 Farm Bill creates the Soil Health and Income Protection Pilot Program, provided for in §1410.70 of the Interim Rule. The statute says that “the lowest practicable cost perennial conserving use cover crop for the eligible land, as determined by the applicable State conservationist after considering the advice of the applicable State technical committee, shall be planted on the eligible land” (new Sec.1231C(b)(3)(A)(ii)(I)). However, the rule does not reference the important role to be played by the State conservationist and State technical committee in determining the appropriate perennial conserving use cover crop, as it should, and only references the “lowest practicable cost permanent vegetative cover” rather than the “lowest practicable cost perennial conserving use cover crop” as is provided for in statute.

We urge USDA to amend §1410.70(e) to read “(e) The approved cover for land enrolled under the Soil Health and Income Protection Pilot Program is the lowest practicable cost perennial conserving use cover crop for the eligible land, as determined by the applicable State conservationist after considering the advice of the applicable State technical committee.”

CLEAR and CLEAR 30 (§1410.80)

We were pleased that Congress included the Clear Lakes, Estuaries, and Rivers initiative (CLEAR) in the 2018 Farm Bill as part of the Continuous CRP, including an expectation that, to the extent practicable, at least 40% of Continuous CRP be enrolled in CLEAR practices. We recognize this codified an initiative developed by USDA, but we were surprised that the Interim Rule does not mention the CLEAR initiative, although it does discuss the new CLEAR 30 pilot program. The Conference Report on the 2018 Farm Bill expresses Congressional intent that “The Managers expect the Farm Service Agency (“FSA”) to target CLEAR practices in high priority watersheds where they will maximize environmental benefits.” Yet the Interim Rule does not address how USDA will implement these provisions.

We urge USDA to recognize the Clear Lakes, Estuaries, and Rivers Initiative in the Rule, along with the water quality practices designated in statute (Sec. 2201(b), which adds new subsection (4) to 16 USC 3831(b)) and the other water quality practices as determined by the Secretary. We support USDA's decision to include duck nesting habitat (CP 37), wildlife habitat buffer on marginal pasture (CP 29), and bottomland timber establishment (CP 31) as CLEAR practices (based on USDA's monthly CRP report for December, 2019), and encourage USDA to also include farmable wetlands and buffers (CP 27 and 28) and shallow water areas for wildlife (CP 9) as CLEAR practices.

We also urge USDA to include language that indicates USDA will promote the use of CLEAR water quality practices in order to achieve the goal of 40% of Continuous CRP being in those practices, and we suggest USDA can do that by designating priority watersheds and working with conservation partners to conduct outreach to enroll landowners in the Continuous CRP, and by actively promoting Conservation Reserve Enhancement Program (and, where appropriate, State Acres For Wildlife Enhancement) initiatives that will achieve water quality goals.

We were also pleased with the new CLEAR 30 pilot program, which provides for 30-year CRP contracts for water quality practices (Sec. 2204 of the 2018 Farm Bill). The Interim Rule would limit the CLEAR 30 pilot to a geographic area to be determined by USDA (§1410.80(1)), although nothing in the statute indicates that the pilot program should be limited geographically. The number of CRP contracts that meet the eligibility requirements of CLEAR 30 by being in a designated water quality practice, and in the last year of a CRP contract, and have a landowner interested in tying up land in a 30-year contract at an annual payment rate that will not increase over that 30 years, is likely to be pretty small. Restricting the potential applicant pool even further by imposing a geographic restriction could result in a pilot program with very few participants.

We urge USDA to remove the Interim Rule's §1410.80(a)(1), which requires that land must be within a CLEAR 30 Pilot Program area announced by USDA to be eligible for a CLEAR 30 contract.

Maintaining Future Benefits

The benefits of the Conservation Reserve Program, and of individual CRP contracts, are tremendous for soil conservation, water quality, fish and wildlife habitat, and other resources. As CRP contracts expire landowners have decisions to make about the future management of the land and those decisions have important impacts on our natural resources. Where the land remains in established cover (grassland, trees, or shrubs), and managed with good conservation

practices (e.g., managed rotational grazing for grasslands, silvopasture or sustained harvest for trees), most if not all of the soil conservation, water quality, and wildlife benefits can be maintained long-term.

But when the soil is tilled or otherwise restored to crop production, most or all of those conservation benefits can be lost. To maintain the soil conservation, water quality, and wildlife benefits, along with the carbon stored in the soil, the capacity to recharge groundwater and reduce flooding, and the many other public benefits, USDA can and should actively provide conservation-focused options for farmers and other CRP landowners as the expiration of their CRP contracts approaches. Those should include:

- * Providing CRP participants with information about their options for re-enrolling their land in General CRP, Continuous CRP, or Grasslands CRP, or extending their current contract, as appropriate;
- * Providing information and encouraging participants to maintain the land in well-managed grass-based livestock production or grass seed production;
- * Offering to use USDA's authority under §2206(a) of the 2018 Farm Bill to provide cost-share for fencing and water to facilitate managed rotational grazing during and after the CRP contract;
- * Providing information on USDA's authority to use §2208 of the 2018 Farm Bill to allow Conservation Stewardship Program or Environmental Quality Incentives Program contracts during the last year of the CRP contract to facilitate managed rotational grazing after expiration of the CRP contract;
- * Providing information on the Transition Incentives Program offering participants incentives to provide a transition of the land to a beginning, veteran, or socially disadvantaged farmer or rancher;
- * Providing information on the potential benefits of transitioning CRP land to organic production;
- * Where participants with expiring CRP contracts plan to return the land to row crop production, providing information on soil health and the benefits of managing the land to retain the soil organic matter levels, and on farming systems to accomplish that.

We think one of USDA's most significant opportunities for conservation of grasslands lies in these expiring CRP contracts. We urge FSA and the Natural Resources Conservation Service to use their resources strategically to attempt to keep expiring CRP acres in grass, and to engage non-profits, states, and other partners in outreach and technical assistance to accomplish this.

Insufficiency of Environmental Assessment

As we noted in our comments on the Draft Programmatic Environmental Assessment of the Conservation Reserve Program, dated October 25, 2019, we believe the USDA's environmental assessment falls short of the requirements of the National Environmental Policy Act, fails to

provide transparency and an adequate opportunity for public comment, and fails to identify and assess a range of alternatives to implement the changes made to the Conservation Reserve Program in the 2018 Farm Bill. We believe therefore that the Finding of No Significant Impact based on that assessment is invalid and unwarranted.

We would be pleased to provide further information or to discuss these recommendations.

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